HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.26063 of 2005

Between:

P.T. Sesha Sai

... Petitioner

And

Central Power Distribution Company
of Andhra Pradesh Limited and another

... Respondents

:: ORDER::

Counsel for the Petitioner: Shri P.V. Venkateshwara Rao
for Shri P.V.S.S.S.Rama Rao

Counsel for the Respondents: Shri Samineni Kishore

March 07, 2007

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This is the second round of litigation by the petitioner in the matter of his appointment in the regular establishment of Central Power Distribution Company of Andhra Pradesh Limited (for short, 'APCPDCL').

The petitioner worked as casual labour for a period of 193 days in the services of the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board'). In terms of the policy circulated by the Board vide Memo No.OSD/(P)/DM-1/1138/85-1, dated 26-8-1985 read with Memo dated 14-9-1993 and B.P.Ms.No.36, dated 18-5-1997, his case was considered for appointment as Junior Lineman, but his candidature was rejected because he failed to qualify the pole climbing test. He filed Writ Petition No.27049 of 1998 for issue of a mandamus to the respondents to consider his candidature for appointment on any other suitable post. The same was disposed of by the learned Single Judge on 6-7-2005 by directing the respondents to re-consider the petitioner's case for absorption on any suitable post including the post of Junior Lineman in the existing vacancy or in any future vacancy as per law. Paragraphs 3, 4 and 5 of that order read as under:

> "3. In the light of the above averments made by the respondents in the counter affidavit, it cannot be said that there is any illegality or infirmity committed by the respondents in passing the impugned proceedings requiring the interference of this Court under Article 226 of Constitution of India.
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> 4. Be that as it may, it is the case of the petitioner that in case of similarly situated persons, when approached this Court, this Court directed to reconsider the candidature for being absorbed in any other suitable post, if they are otherwise eligible.

> 5. In view of the same, I deem it appropriate to direct the respondents to reconsider the case of the petitioner for absorption against any suitable post including the Junior Line Man in the existing vacancy or in the future vacancies as per law.

In the purported compliance of the aforementioned order, Superintending Engineer (Operation), Anantapur (for short, 'the Superintending Engineer') reconsidered the petitioner's case for appointment as LDC/RC/Typist/Sub-Engineer including Junior Lineman, but rejected his candidature on the ground that he does not possess the qualifications prescribed for any of those posts. This was conveyed to the petitioner by the Superintending Engineer vide letter No.SE/O/ATP/PO/Adm./S3/D.No.2073, dated 24-11-2005.

The grievance of the petitioner is that even though, in terms of the direction given by this Court in Writ Petition No.27049 of 1998, the respondents were duty bound to consider his case for appointment on any other suitable post including the post of Helper, the Superintending Engineer concerned deliberately omitted to consider his candidature for appointment on that post and, in this manner, he has been discriminated.

In the counter filed by the respondents in the form of the affidavit of Shri Avadhani Gopal, Superintending Engineer, Operation, APCPDCL, it has not been denied that in terms of the order passed in Writ Petition No.27049 of 1998, the petitioner's candidature was required to be considered on any other suitable post. It has also not been denied that the Superintending Engineer did not consider the petitioner's case for appointment as Helper. However, the deponent has averred that the petitioner was not selected for the post of Junior Lineman/LDC/RC/ Typist/Sub-Engineer in terms of B.P.Ms.No.36, dated 18-5-1997 because he does not possess the prescribed

qualifications.

I have heard learned counsel for the parties. Since the respondents have not controverted the petitioner's assertion that his candidature was not considered for appointment on the post of Helper, there is no escape from the conclusion that they have failed to abide by the direction given by the learned Single Judge in Writ Petition No.27049 of 1998 and this has resulted in violation of the petitioner's right to equality guaranteed under Articles 14 and 16 of the Constitution of India. Indeed, it is not the pleaded case of the respondents that no person junior to the petitioner has been absorbed on the post of Helper/Watchman. Therefore, it must be held that he has been arbitrarily discriminated qua similarly situated persons.

In the result, the writ petition is allowed. The decision contained in letter No.24-11-2005 of the Superintending Engineer, is declared as illegal and quashed. The respondents are directed to reconsider the petitioner's case for appointment on any other suitable post in terms of order dated 6-7-2005 passed in Writ Petition No.27049 of 1998. This exercise must be undertaken and completed within a period of two months from the date of receipt of a copy of this order and the decision taken by the competent authority shall be communicated to the petitioner at the end of two months period by registered post.

G.S. SINGHVI, CJ

March 07, 2007

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